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Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2007 to 30 June 2008

Report of the Secretary-General

Summary

The present report is submitted in response to General Assembly resolution 59/287, in which the Assembly requested the Secretary-General to inform Member States on an annual basis on all actions taken in cases of proven misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. The report covers the period from 1 July 2007 to 30 June 2008.

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I. Introduction

1. The present report is submitted in response to paragraph 16 of General Assembly resolution 59/287, by which the Assembly requested the Secretary-General to inform Member States on an annual basis on all actions taken in cases of proven misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. It covers the period from 1 July 2007 to 30 June 2008.

2. As requested in paragraph 17 of resolution 59/287, an information circular is being issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II below so that the data provided in sections III and IV can be understood in context. Section III of the report contains a summary of the cases for which a disciplinary measure was imposed by the Secretary-General during the reporting period. Section IV provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

II. Overview of administrative machinery in disciplinary matters

A. Rules governing the conduct of staff members[1]

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and *integrity*" (emphasis added).

5. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 101.2 for specific instances of expected or prohibited conduct.

B. Misconduct

6. Article X of the Staff Regulations, entitled "Disciplinary measures", provides in regulation 10.2 that "the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory". Staff rule 110.1, on misconduct, provides that "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other

[1] For a full overview of relevant provisions, see ST/SGB/2002/13, issued at the request of the General Assembly. Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can also be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary" (see http://secap472.un.org/hr_handbook/).

relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct ... leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct". Similarly, staff rule 101.2 (a) provides that "disciplinary procedures ... may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371, on revised disciplinary measures and procedures,[2] provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

7. Where the head of office or responsible officer believes, on the basis of an investigation, that disciplinary procedures may be warranted, he or she will refer the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.[3] During the period covered by the present report, preliminary investigations were undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services at its own initiative or at the request of the head of office.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the first step is to notify the staff member in writing of the allegations as well as of his or her right to seek the assistance of counsel. The staff member is given a reasonable opportunity to respond to the allegations. In the light of the comments provided by the staff member, it is decided whether to close the case, to refer it to a Joint Disciplinary Committee for advice or to summarily dismiss the staff member.

9. While the Secretary-General has broad discretionary authority in deciding upon an appropriate measure in each case, no staff member can be subjected to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate. Such referral to a Joint Disciplinary Committee may be waived when the staff member concerned and the Secretary-General agree on a disciplinary measure and the proceedings would therefore serve no valid purpose. When the seriousness of the case warrants summary dismissal, prior referral to a Joint Disciplinary Committee is not required; however, staff members who have been summarily dismissed may, at their initiative, seek a review of their case by a Joint Disciplinary Committee. All staff members subjected to disciplinary measures ultimately have recourse to the United Nations Administrative Tribunal.[4]

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[2] See also ST/AI/379, on procedures for dealing with sexual harassment.

[3] The head of administration in a mission will refer the case to the Department of Field Support, Field Personnel Division, at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission.

[4] Numerous judgements of the United Nations Administrative Tribunal relate to disciplinary measures and show the practice of the Secretary-General for those cases brought before the Tribunal. Digests of those cases can be found online in the "Case and Jurisprudence Digest of the United Nations Administrative Tribunal" (see http://webfarmext.un.org/hrmtribunal).

D. Disciplinary measures

10. Staff rule 110.3 provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

(a) Written censure by the Secretary-General;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for within-grade increment;

(d) Suspension without pay;

(e) Fine;

(f) Demotion;

(g) Separation from service, with or without notice or compensation in lieu thereof;

(h) Summary dismissal.

11. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and extenuating circumstances.

E. Other measures

12. Reprimands, written or oral, by a supervisory official are not considered disciplinary measures. Like warnings or letters of caution, they are administrative/managerial measures. However, they are also important measures for upholding standards of proper conduct and promoting accountability. Where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

III. Summary of cases for which the Secretary-General imposed a disciplinary measure during the period from 1 July 2007 to 30 June 2008

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The function or other particulars of the staff member are provided only when they played a role as aggravating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

14. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations the case is closed and the staff member is

considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the official status file.

A. Abuse of authority/harassment

15. A staff member engaged in a sexual relationship with a daily worker and favoured the daily worker by actively seeking her transfer to an office where the daily worker would come under the supervision of the staff member. *Disposition*: demotion by one level and no possibility of promotion for two years, after the advice of a Joint Disciplinary Committee.

16. A manager abused his authority over four staff members by pressuring them into authoring and/or signing a memorandum of support, including by using threats of non-renewal of contract. *Disposition*: fined four months' net base salary after advice of a Joint Disciplinary Committee (the staff member was due to retire at the end of the month in which the Secretary-General's decision was rendered).

17. A staff member engaged in abuse of authority and sexual and workplace harassment of a colleague. The staff member also failed to follow instructions properly issued by a supervisor. *Disposition*: separation from service after advice of a Joint Disciplinary Committee.

B. Gross negligence

18. A staff member drove a United Nations vehicle without a United Nations permit and caused a traffic accident, which caused bodily injury to another staff member and extensive damage to a United Nations vehicle and to the property of a third party. *Disposition*: a written censure and a one-month suspension from duty without pay after waiver of referral to the Joint Disciplinary Committee.

19. A staff member failed to perform satisfactorily the duties of Project Supervisor by improperly certifying goods as having been delivered and work as having been satisfactorily completed without verifying. *Disposition*: a written censure after waiver of referral to the Joint Disciplinary Committee.

20. A staff member failed to perform duties pursuant to correct procurement procedures, including by (a) failing to make efforts to ensure completion of procurement documentation in accordance with provisions of the Procurement Manual; (b) failing to ensure that construction works were completed in accordance with scope of work and bill of quantity documentation; and (c) improperly certifying project completion reports, contractor performance reports and service certification reports. *Disposition*: a written censure after waiver of referral to the Joint Disciplinary Committee.

21. A staff member who was Head of the Contracts Unit of the Procurement Section and Acting Chief Procurement Officer in a peacekeeping mission failed to perform duties pursuant to the correct procurement procedures, as was demonstrated, inter alia, by poor file management practices and allowing brand-specific items to be included in scope of work and bill of quantity documentation.

Disposition: a written censure after waiver of referral to the Joint Disciplinary Committee.

C. Fraud/misrepresentation

22. A staff member engaged in outside employment without notice to or approval of the Secretary-General; made material misrepresentation on his Personal History Profile form by failing to provide relevant information on a prior arrest and conviction of the host country penal code of an offence more than a minor traffic violation; and obtained and used an official government form of identification under false pretences. *Disposition*: summary dismissal.

23. A staff member committed fraud against the Organization by processing the costs of his personal travel as part of the official travel of another staff member. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

24. A staff member submitted false education grant claims in respect of two dependants. One of the claims was supported by a forged costs breakdown. *Disposition*: summary dismissal.

25. A staff member submitted false education grant claims in respect of eight dependants supported by forged costs breakdown and a falsified certificate for grades and/or school attendance certificates. *Disposition*: summary dismissal.

26. A staff member failed to comply with the laws of a host country and failed to disclose to the Organization a conviction under the host country's penal code for possessing and viewing child and other hard-core pornography. *Disposition*: summary dismissal.

27. A staff member submitted medical insurance claims in respect of three family members that were supported by fraudulent medical certificates and receipts. *Disposition*: summary dismissal.

28. A staff member engaged in a visa fraud scheme and in unauthorized outside activities. *Disposition*: summary dismissal.

29. A staff member performing procurement functions solicited and received monies from local citizens in exchange for their initial recruitment and/or continued service with the Organization. *Disposition*: separation from service without compensation in lieu of notice or any termination indemnity.

30. A staff member, by virtue of office held, used information gained from official functions for private gain; failed to uphold the requisite standards in official procurement exercise; secured two separate loans from entities bidding on a United Nations contract, and engaged in corrupt practices. *Disposition*: summary dismissal.

31. A staff member performing procurement functions solicited, received and accepted sums of money from a vendor who did and sought to do business with the United Nations. *Disposition*: summary dismissal.

32. A staff member performing procurement functions engaged in a pattern of bribery and a scheme to solicit payments and other benefits from a number of vendors and companies that did or sought to do business with the United Nations,

and of having knowingly made false, misleading and inaccurate material statements to investigators. *Disposition*: summary dismissal.

33. A staff member performing procurement functions solicited, received and accepted sums of money from a vendor who did and sought to do business with the United Nations. *Disposition*: summary dismissal.

D. Theft/misappropriation

34. A staff member working as a store clerk, in collusion with another staff member working as a dispatcher, misappropriated photocopying paper as part of a scheme in which the paper was sold to third parties. *Disposition*: summary dismissal.

35. A staff member performing as a dispatcher assisted in the misappropriation of photocopy paper by operating a United Nations vehicle onto which was loaded United Nations property fraudulently obtained by another staff member who worked as a store clerk. The driver of the United Nations vehicle then delivered the United Nations property to the residence of the store clerk. *Disposition*: summary dismissal.

36. A staff member attempted to steal eight bundles of concertina wire. *Disposition*: summary dismissal.

E. Sexual exploitation and sexual abuse

37. A staff member was involved in inappropriate sexual relationships with female beneficiaries of assistance, and deliberately misled investigators to protect his own interests. *Disposition*: summary dismissal.

F. Computer-related misconduct

38. A staff member repeatedly used United Nations laptops to download and view paedophile material, in violation of the criminal code of the host country. The staff member persisted in such conduct even after the staff member was formally warned for misusing United Nations property. *Disposition*: separation from service with compensation in lieu of notice, without termination indemnity, after the advice of a Joint Disciplinary Committee.

39. A staff member saved pornographic material that was sent to him and viewed it, possibly during office hours, from the hard-drive. *Disposition*: a loss of two steps in grade, and a two-year deferment of eligibility for within-grade salary increment after the advice of a Joint Disciplinary Committee.

40. A staff member improperly accessed, copied and divulged confidential information and communication technology data, without authorization. *Disposition*: summary dismissal.

G. Conflict of interest

41. A staff member performing functions of procurement assistant solicited, received and accepted a loan from a vendor who did or sought to do business with the United Nations. *Disposition*: summary dismissal.

42. A staff member performing functions of procurement officer solicited, received and accepted a loan from a vendor who did business and sought to do business with the United Nations. *Disposition*: summary dismissal.

43. A staff member working in the procurement area accepted hospitality from a vendor doing business with the United Nations, the nature and value of which was in violation of the Staff Regulations and Rules, and the guidelines and provisions of the Procurement Manual in force at the relevant time. The staff member also failed to respond fully to requests for information in the context of an authorized investigation. *Disposition*: summary dismissal.

H. Other

44. A staff member omitted significant assets from the annual financial disclosure forms and failed to cooperate with an official investigation. *Disposition*: demotion by one level, without opportunity, for the remaining period of service, to serve at a higher level and fined net base salary of two months after the advice of a Joint Disciplinary Committee.

45. A staff member conspired with another person to fraudulently bring a third party into a host country, thus violating local law. The staff member failed to comply with local laws and honour private legal obligations, including, but not limited to, the obligation to honour an order of a competent court. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

46. A staff member attempted to cheat on an official language examination administered to internal and external candidates. The staff member refused to cooperate in an official investigation on the incident. *Disposition*: demotion, no possibility of promotion for two years, and written censure after the advice of a Joint Disciplinary Committee.

47. A staff member threatened security guards with a knife, took control of a gate phone, and smashed a VHR radio belonging to a staff member. The staff member returned some hours later, armed with another knife. *Disposition*: summary dismissal.

IV. Criminal behaviour

48. Resolution 59/287 requests the Secretary-General to take action expeditiously in cases of "proven ... criminal behaviour" and ensure that all staff of the Organization are informed about the actions taken. The Office of Legal Affairs has advised that criminal behaviour of staff members can be established only by competent authorities of Member States, in accordance with their criminal procedures. That office is aware of three cases during the reporting period where

United Nations staff members have been subject to criminal proceedings by competent national authorities of Member States:

(a) A staff member was arrested on charges of conspiracy and committing fraudulent acts in a scheme to fraudulently obtain visas to permit non-citizens to enter the United States. The staff member pled guilty to one count of fraud and misuse of visas, permits and other documents. The then former staff member was subsequently sentenced to a term of one year of imprisonment;

(b) A staff member was indicted and arrested for the alleged criminal offence of smuggling narcotic substances into the United States using a diplomatic pouch. The staff member subsequently entered a guilty plea with the United States authorities and was sentenced to a one-year term of probation;

(c) A staff member was indicted and arrested by local authorities in relation to charges of mail and wire fraud, conspiracy and fraud. A trial was held and a guilty verdict on these charges was entered. The then former staff member was subsequently sentenced to a term of 97 months of imprisonment and ordered to pay restitution in favour of the United Nations in the amount of US$ 932,165.99.

49. **The Secretary-General submits the present report to the General Assembly for its consideration.**